

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KONI v. CYPRUS

(Application no. 66048/09)

JUDGMENT

STRASBOURG

27 October 2015

FINAL

27/01/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Koni v. Cyprus,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Krzysztof Wojtyczek,
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 October 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 66048/09) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Ms Constantia Koni ("the applicant"), on 19 November 2009.

2. The applicant was born in 1951 and lives in Nicosia. She was represented by Mr D. Kallis and Mr C. Efstathiou, lawyers practising in Nicosia with Kallis & Kallis LLC and Efstathios C. Efstathiou LLC. The Cypriot Government ("the Government") were represented by their Agent, the Attorney-General, Mr P. Clerides.

3. The applicant alleged that the proceedings in which the domestic courts granted her husband's petition for a divorce were unfair.

4. On 26 August 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The first instance proceedings before the Larnaca Family Court (divorce proceedings and legal aid proceedings)

5. On 16 May 2006 the applicant's husband filed a petition for divorce with the Larnaca Family Court. This was on the ground that his marriage to

the applicant had broken down irretrievably because, among other reasons, he and the applicant had been separated for five years (that is, one year longer than the minimum period required by law: see relevant domestic law and practice at paragraph 25 below).

6. The case was set for a directions hearing on 14 June 2006. On that date the applicant appeared in person and asked for additional time to file her defence to the petition: the Family Court acceded to her request and adjourned the hearing to 4 October 2006.

7. On 14 June 2006 the applicant applied to the Family Court for legal aid. The hearing of that legal aid application was fixed for 15 September 2006. On 15 September the applicant appeared before the court and asked for a one-month extension as she was not sure if she would maintain her application. The court adjourned the legal aid hearing to 19 October 2006.

8. On 4 October 2006, the applicant attended court and requested a further extension for filing her defence to the petition on the ground that her legal aid application was pending. The court adjourned the case to 1 November 2006 and directed that the applicant file her defence by that date.

9. The applicant did in fact decide to maintain her legal aid application. When this legal aid application came before the Family Court on 19 October 2006, the court considered that the application came within the scope of the Law on Legal Aid (see relevant domestic law and practice at paragraph 23 below) so it instructed the Welfare Office to prepare a social welfare report on the applicant and adjourned the hearing of the legal aid application to 17 November 2006.

10. The applicant failed to file her defence to the petition for divorce by 1 November 2006 as directed. She also failed to appear in court on that date. In her absence, counsel for the applicant's husband requested that the case be set for trial. The court acceded to this request and a trial date of 22 November 2006.

11. The legal aid application came before the court on 17 November 2006 as scheduled. The applicant attended court. However, because no one from the Welfare Office was present, the court adjourned its examination of the application to 21 December 2006.

12. On 22 November 2006 the applicant did not appear at court for the trial in the main proceedings. The applicant's husband attended with counsel. In the applicant's absence, the court proceeded to hear the evidence of her husband who stated that the couple had been suffering problems and had been separated since December 2000. No other witnesses were heard. The court gave an *ex tempore* judgment granting the petition for divorce.

13. Although the petition for divorce had been granted, the hearing in the legal aid application went ahead as scheduled on 21 December 2006. The applicant was not present at court. A representative of the Welfare Office informed the court that, from a letter in the court file dated

20 December 2006, which had been sent by a welfare officer to the court registrar, it appeared that the applicant was no longer interested in receiving legal aid. The court accordingly dismissed the legal aid application for want of prosecution.

B. Appeal proceedings before the Family Court of Appeal

14. On 29 December 2006 the applicant appealed against the Family Court's judgment to the Family Court of Appeal. She was legally represented on appeal.

15. The applicant submitted two grounds of appeal: that the Family Court had wrongly proceeded with the hearing of the petition for divorce in her absence, and that it had wrongly decided on the dissolution of the marriage. In respect of both grounds, she submitted that the Family Court had acted in breach of Article 30 of the Constitution (the right of access to court and to a fair trial: see paragraph 22 below), the Law on Legal Aid, and the rule of natural justice, including the right to be heard (*audi alteram partem*).

16. In the reasons accompanying her grounds of appeal, she again made reference to Article 30 of the Constitution and the right of litigants to present their case before the court and to be defended by counsel. The applicant again submitted that the rules of natural justice safeguarded the right to be heard. She further stated that she had informed the Family Court that she had applied for legal aid. She had been under the impression that her legal aid application would be examined by the same bench that would hear the petition for divorce. As the legal aid application had been fixed to be examined at a date subsequent to the date the divorce petition was fixed (21 December for the legal aid hearing as against 22 November for the divorce petition hearing), she presumed that the divorce petition would be examined following the granting of legal aid so she could file a defence through a lawyer. It was for this reason that she had not appeared in court on 1 and 22 November 2006.

17. On 21 September 2007, the applicant's husband died. In his will he bequeathed part of his property to another woman. As a consequence of the divorce, the applicant was not entitled to inherit from his estate or to receive a widow's pension. The applicant maintained her appeal against the Family Court's judgment.

18. On 19 December 2008, the Court of Appeal directed the parties to file skeleton arguments (written outlines of their submissions), in effect accepting the applicant's notice of appeal. The Court of Appeal further directed that once the skeleton arguments were submitted, the appeal was to be set down for a hearing.

19. In her skeleton argument dated 9 January 2009, the applicant developed her ground of appeal relating to Article 30, stating that the

Family Court had acted contrary to Articles 30(1) (the right of access to court), Article 30(3)(b) (the right to present one's case and to have sufficient time for its preparation), and Article 30(3)(d) (the right to counsel and to free legal assistance). She relied on both the relevant case-law of the Cypriot courts on these provisions and on the relevant case-law of this Court on the corresponding provisions of Article 6 of the Convention, including *Airey v. Ireland*, 9 October 1979, Series A no. 32. In respect of her submission as regards the rules of natural justice, she referred to *Halsbury's Laws of England* (4th ed., Vol 1, § 76) and the court's duty to provide every party with a fair chance to set his case before the court.

20. A hearing on the merits of the appeal took place before the Court of Appeal on 6 March 2009. At the hearing, the applicant adopted her written submissions. Counsel for the applicant's ex-husband submitted that *Airey* could be distinguished on the basis that the Convention did not grant a general right to legal aid and, in any event, the present case was not so complex as to require it. The hearing was adjourned to 8 May 2009. On that date, counsel for the applicant provided the court with copies of the relevant case-law cited in the applicant's written submissions. No further submissions were made and the court reserved judgment.

21. On 30 June 2009 the Court of Appeal dismissed the appeal. It found:

> "It is the appellant's position that she had informed the court that she had submitted an application for legal aid and, because she believed that her application would be examined by the court which would examine the substance of the petition for the dissolution of the marriage, she failed to appear on 1 November 2006, with the consequence that the case was heard in her absence and the petition for divorce was granted against her.
>
> Regarding the allegations of violation of the provisions of Law 165(I)/2002 and the principles of natural justice, no specific reasons have been put forward which could substantiate the above allegations, which are accordingly dismissed.
>
> Regarding the alleged violation of Article 30 of the Constitution, the appellant has not specified which particular paragraph has been violated and this allegation is dismissed for vagueness. Independently of this conclusion, we have already made detailed reference to what took place both in the proceedings concerning the application for legal aid and the divorce proceedings. From the above, it appears that judgment under appeal was the result of the complete indifference of the appellant to respond to the directions of the Court to file her defence and her failure to appear before the court. The appellant cannot claim that her failure to appear was due to the fact that she believed that the divorce petition would be examined by another court.
>
> The appeal is dismissed with costs."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

22. Article 30 of the Constitution, where relevant, provides as follows:

> "1. No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever is prohibited.
>
> 2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgment shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice.
>
> 3. Every person has the right:
>
> ...
>
> (b) to present his case before the court and to have sufficient time necessary for its preparation;
>
> ...
>
> (d) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law"

B. The Law on Legal Aid

23. Sections 3 and 6 of the Law 165(I) of 2002 on Legal Aid provide, *inter alia*, that legal aid shall be granted free of charge in proceedings before a family court concerning marital or family disputes. Section 7 provides that, in determining whether it is in the interests of justice that legal aid be granted, the court shall take into account a social welfare report prepared by the Welfare Office, the seriousness of the case and other relevant circumstances.

C. Divorce

24. Article 111 (2)(B) of the Constitution (as amended) provides for divorce *inter alia* when the relationship between the spouses has broken down irretrievably.

25. Section 27(3) of Law 104(I) of 2003 on Marriage sets out the matters which will constitute irretrievable breakdown. By section 27(3)(b), this includes a four-year separation of the spouses, the subsection providing:

> "The irretrievable breakdown of the marriage as referred to in this subsection shall be conclusively presumed when the spouses have been living apart for a period of at least four years.
>
> A petition for divorce may be granted even if the reason for the irretrievable breakdown can be attributed solely to the petitioner.
>
> The four-year period referred to above shall not be interrupted by minor breaks in the period of separation where these were made in an attempt to restore relations between the spouses and did not exceed six months."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

26. The applicant complained that the proceedings before the Family Court and Family Court of Appeal were unfair and thus in violation of her right to a fair trial as guaranteed by Article 6 of the Convention. She also complained that the failure of the Court of Appeal to properly consider her appeal meant she was deprived of her right of access to Court, in further breach of Article 6. Where relevant, that article provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

27. In making those submissions, in her application form the applicant also invoked Article 6 § 3(b), (c) and (d) of the Convention. These provisions provide:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

28. The Government contested those arguments.

A. The scope of the complaint

29. Before considering the admissibility and merits of the applicant's Article 6 complaint, it is appropriate to recall that, contrary to Article 30(3) of the Cypriot Constitution, Article 6 § 3 of the Convention only applies to criminal proceedings (see, for instance, *Sardón Alvira v. Spain*, no. 46090/10, § 48, 24 September 2013 and *Cruz de Carvalho v. Portugal*, no. 18223/04, § 29, 10 July 2007). It therefore has no application to the present case. Instead, the applicant's complaints as to the fairness of the divorce proceedings fall to be examined under the general right to fair trial as provided for by Article 6 § 1 (see, among many authorities, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, §§ 30–35, Series A no. 274).

B. Admissibility

1. The Government's preliminary objection of failure to exhaust domestic remedies

30. In their final observations of 24 March 2011, the Government submitted for the first time that the applicant failed to exhaust domestic remedies as she could have brought a civil action in the District Court alleging a breach of the right to a fair trial under Article 30 of the Constitution.

31. The Court recalls that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X).

32. In the present case, in their observations of 13 December 2010 on the admissibility and merits of the application the Government did not raise any objection that the applicant had failed to exhaust domestic remedies. The possibility of a civil action in the District Court was first mentioned in their additional observations on the merits and on the applicant's claims for just satisfaction. The Government did not provide any explanation for this delay and the Court cannot discern any exceptional circumstances that might exempt them from their obligation to raise any plea of inadmissibility in good time (see *Dhahbi v. Italy*, no. 17120/09, §§ 23–25, 8 April 2014). It follows that the Government are estopped from raising the objection of non-exhaustion of domestic remedies.

2. Other grounds of inadmissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

a. The applicant

34. The applicant submitted that the divorce proceedings taken as a whole violated her right to a fair trial. She relied on three aspects of the proceedings which, taken cumulatively, rendered the proceedings before the Family Court and the Court of Appeal unfair. First, the Family Court heard in her absence the divorce petition filed by her husband. Second, it did so before examining her application for legal aid. Third, the Family Court of Appeal did not properly consider her submissions and give a reasoned judgment.

35. For the first and second grounds of complaint, the applicant submitted that, when hearing the petition for divorce, the Family Court must have been aware of the pending legal aid application. She had informed the court of this fact, and one of the judges in the legal aid proceedings, who was a member of the three-judge panel in the divorce proceedings, had set a hearing date for the legal aid application which was after the date for the hearing in the main proceedings. Although the applicant accepted that she had failed to attend certain of the hearings in the case, this was because she had been under the impression that the hearing in the divorce proceedings would be postponed until the legal aid application had been examined. The real issue was whether, as a layperson, she had been justified in forming this impression and, in her submission, she had been.

36. Moreover, although the Government submitted that this was not a case where legal aid would have been granted (see paragraph 42 below), her complaint was not that legal aid should have been granted, but rather that it was unfair of the Family Court to rule on the petition for divorce before it had decided on the application for legal aid. The issue of whether legal aid should have been granted was one that fell to be decided by the Family Court. In the absence of a proper ruling by the Family Court, it was not for the Government to submit that legal aid was unnecessary.

37. In any event, legal aid in Cyprus was not restricted to cases raising complex legal issues but also cases involving complex and disputed facts. In this connection, she stressed that the main allegation made by her ex-husband was that they had lived separately since December 2000. The applicant denied this allegation because it was not true. In Cyprus's adversarial system, the only two ways she could challenge such an allegation were by giving evidence herself and by cross-examining her husband. Moreover, the relevant rules of procedure required the filing of a

written defence. This defence had to comply with certain formalities in which a lay litigant could not be conversant.

38. For these reasons, the decision to grant the divorce petition in her absence, before her application for legal aid could be examined, meant that the Family Court had denied her the opportunity to properly present her case.

39. For her third ground of complaint – the failure of the Court of Appeal to properly consider her appeal – the applicant submitted that the Court of Appeal did not examine her arguments concerning the breaches of Article 30 of the Constitution and the Law on Legal Aid.

40. With respect to the alleged breach of Article 30, the Court of Appeal dismissed her ground of appeal on the basis that she had supposedly failed to specify the particular paragraph of Article 30 which she alleged had been breached. Relying on *Platakou v. Greece*, no. 38460/97, §§ 42–44, ECHR 2001-I, she submitted that this was excessively formalistic and thus deprived her of her right of access to court. In any case, in her written and oral submissions to the Court of Appeal (see paragraphs 19 and 20 above) she had specified that she was relying on Article 30(3)(b) and (d).

41. With respect to the alleged breach of the Law on Legal Aid, the Court of Appeal found that the applicant could not allege that she had failed to appear because she believed the petition for divorce and the legal aid application would be examined by two different courts. This was a material misconception by the Court of Appeal. On the contrary, her ground of appeal had stated that the reason she did not appear was that she was under the impression that the legal aid application and the petition for divorce would be heard by the same court.

b. The Government

42. The Government submitted that there had been no breach of Article 6. In the particular circumstances of the case, legal aid was not necessary for a fair hearing. There was nothing to indicate that the applicant could not represent herself effectively, as the only fact in dispute was the period that the applicant and her husband had been separated. This was a matter of simple fact, not a complex legal issue.

43. The applicant had been given the opportunity to apply for legal aid. She was not granted legal aid in sufficient time because of her negligence and her failure to pursue her divorce petition with due diligence (in contrast to the judicial negligence in granting legal aid which led the Court to find a violation of Article 6 in *García Manibardo v. Spain*, no. 38695/97, § 42, ECHR 2000-II).

44. The applicant was well aware that her divorce petition had been fixed for trial while her legal aid application was still pending. She could have appeared in court to inform the court of this fact and request additional

time, as she had done on previous occasions. Alternatively, she could have defended the petition herself.

45. The Court of Appeal did not refuse to rule on the applicant's complaint under Article 30 of the Constitution. The Government accepted that, in her grounds of appeal, the applicant had relied on Article 30(3)(d). Therefore, Court of Appeal's reference to the applicant's complaint under Article 30 being vague was unfortunate. However, the Court of Appeal's judgment had to be read as a whole. Notwithstanding this reference, the Court of Appeal had gone on to find that the Family Court's judgment was a result of the applicant's indifference to the first instance proceedings. Thus, the rejection of the Article 30 complaint as vague might have amounted to excessive formalism but for the fact that it had been followed by an examination and rejection of the applicant's Article 30 complaint on its merits. Since this examination had been carried out, there was no breach of Article 6.

2. *The Court's assessment*

a. General principles

46. Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II and *Larin v. Russia*, no. 15034/02, § 35, 20 May 2010). A hearing may not be necessary in the particular circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see, *mutatis mutandis*, *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A, and *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312). Legal assistance in civil cases is not mandatory either, although, in certain circumstances, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32, p. 14-16). In discharging its obligation to provide parties to civil proceedings with legal aid, when it is provided by domestic law, the State must display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (see *Muscat v. Malta*, no. 24197/10, § 46, 17 July 2012, with further references therein).

47. Questions of personal presence, the form of the proceedings (oral or written), legal representation and so on should be analysed in the broader context of the "fair trial" guarantee of Article 6 (see, for instance, *Larin*, cited above, § 36). The Court should verify whether the applicant – party to

the civil proceedings – has been given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that did not place him at a substantial disadvantage vis-à-vis his opponent (see *Larin* at § 36 with further references therein).

48. Judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (*García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I (internal references omitted), quoted with approval in *Hansen v. Norway*, no. 15319/09, § 71, 2 October 2014).

49. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies, in particular, to the interpretation by courts of rules of a procedural nature such as time-limits governing the submission of documents or lodging of appeals. The Court's role is, however, to ascertain whether the effects of such an interpretation are compatible with the Convention. In deciding, on the basis of a particularly strict construction of a procedural rule, not to examine the merits of a case, domestic courts may undermine the very essence of an applicant's right to a court, which is part of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see *Muscat*, cited above, § 43, again with further references therein).

b. The present case

50. Turning to the present case, as a preliminary matter the Court notes that, while the applicant's principal complaint is that the proceedings before the Family Court and the Family Court of Appeal were unfair, in her submissions she also argues that the Court of Appeal was excessively formalistic and this deprived her of her right of access to court (see paragraph 40 above). While of course excessive formalism by domestic courts can constitute a violation of the right of access to court, this is more commonly the case when, for instance, a domestic court has applied a time-limit or other procedural rule inconsistently or with particular strictness and, as a consequence, refused to hear an appeal at all (see, for instance, *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, §§ 43–50, *Reports of Judgments and Decisions* 1998-VIII). Here, the appeal was heard. For that reason, the applicant's submission is more properly considered as part of her general submissions as to the fairness of the proceedings before the Family Court and the Family Court of Appeal.

51. In determining whether those proceedings were fair, it is appropriate to consider first, the first instance proceedings before the Family Court and, thereafter, whether any unfairness in those proceedings was remedied by the Court of Appeal.

52. In so doing, the Court observes that it is not its task to say whether legal aid should have been granted to the applicant. That is not her complaint. Instead, her submission is that the Family Court acted unfairly in determining the petition for divorce while the legal aid application was pending. The Court agrees with that submission. It was plainly in the interests of justice that the application for legal aid be determined first. Given what was at stake for the applicant in divorce proceedings, she was entitled to know where she stood in respect of the legal aid application before deciding how to conduct her defence to the petition for divorce. Moreover, the Court considers that it was incumbent on the Family Court properly to manage the proceedings and it was unsatisfactory that, rather than hearing the legal aid application and then the petition for divorce, the Family Court instead allowed the two proceedings to proceed in parallel and, ultimately, allowed the petition to be heard a full month before the legal aid application.

53. It is true that, as stated by the Family Court of Appeal in its judgment, the applicant failed to file her defence to the petition by 1 November 2006 and failed to appear before the court for the hearing of the petition on 22 November 2006. However, the applicant was a litigant in person. She was, even at this late stage of proceedings, still waiting for her application for legal aid to be heard. Moreover, she had attended every hearing the Family Court set concerning the legal aid application, save the last which, however, was of no practical significance since the petition had already been determined. Yet, when the last hearing for the legal aid application was set for 21 December 2006, she was entitled to draw the conclusion – as any layperson would – that the petition for divorce would not be determined before the legal aid application and that, once the matter of legal aid had been settled on 21 December, she would be able to file her defence to the petition with the help of lawyer.

54. It falls therefore to consider whether the appeal proceedings before the Family Court of Appeal remedied this unfairness. In the Court's view, they did not. The Government have accepted that the Court of Appeal's reference to the applicant's Article 30 complaint being vague was unfortunate. This is certainly the case, but it was also unfair. In the reasons accompanying her grounds of appeal the applicant referred to the right of litigants to present their case and to be defended by counsel, rights guaranteed by Article 30(3)(b) and (d) of the Constitution. In her skeleton argument – filed at the direction of the Court of Appeal – she developed her submissions based on Articles 30(3)(b) and (d), supplementing those submissions with references to the case-law of this Court on the

corresponding provisions of Article 6. The Court of Appeal then heard oral submissions on the relevance of the *Airey* case to the issues it had to decide. By the time the Court of Appeal came to give judgment it could not reasonably be said that the applicant's Article 30 ground of appeal was vague and it was thus unfair to dismiss it for that reason. Neither could it be said that the applicant had not relied on any specific grounds for complaining that there had been a breach of the rules of natural justice granting a party the right to be heard in her own cause. Finally, contrary to the Government's submissions, this unfairness was not rescued by the Court of Appeal's view that the first instance judgment was a result of the applicant's total indifference to the proceedings. This view did not address the applicant's submissions as to why she had failed to attend on the trial date. Nor did it properly address one of the central issues in the case, the unfairness caused by the Family Court's decision to proceed to trial in the absence of the applicant in a case in which it could reasonably be expected that no further steps would be taken in the petition, including the filing of a defence, before the application for legal aid had been determined.

55. For the above reasons, the Court finds that the proceedings in the case – before the Family Court and on appeal to the Court of Appeal – were unfair. Accordingly, it concludes that there has been a violation of Article 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

56. In her claims for just satisfaction, submitted with her observations on the admissibility and merits of the application on 27 January 2011, the applicant asserted for the first time that there had also been a violation of Article 12 of the Convention (the right to marry and to found family).

57. To the extent that this can be said to be a complaint of a violation of the Convention, the date of introduction must be taken, not as the date the application was lodged, but rather the date the complaint was first made, that is, 27 January 2011: see, for instance, *Allan v. the United Kingdom*, no. 48539/99, 28 August 2011; and *Adam and others v. Germany*, no. 290/03, 1 September 2005. The final domestic decision in the case was the Court of Appeal's judgment of 30 June 2009. Accordingly, this complaint, having been lodged six months after that final decision, must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

59. The applicant claimed that, had the petition for divorce not been granted, and had she remained married to her ex-husband at the time of his death, she would have been entitled to a widow's pension of EUR 6,500 per year. She submitted that, having regard to her age (sixty at the time she submitted her claims for just satisfaction), a 12-year multiplier would be appropriate, giving a claim of EUR 78,000. She further claimed that, having regard to the value of her husband's estate, had they remained married at the time of his death, she would have inherited EUR 109,000.

60. The Government submitted these claims were excessive, unfounded and unsubstantiated.

61. The Court reiterates that the indispensable condition for making an award in respect of pecuniary damage is the existence of a causal link between the damage alleged and the violation found (see, for instance, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999‑III). In the present case the applicant's claim for pecuniary damage is based on the assumption that she and her ex-husband would have remained married at the time of his death. In other words, it is based on the assumption that the petition for divorce would not have been granted by the Family Court. However, the Court is unable to speculate as to what the outcome of those proceedings would have been had the Family Court heard the applicant before granting the petition. Accordingly, there is no causal link between the violation it has found and the pecuniary losses alleged by the applicant. The applicant's claim for pecuniary damages falls to be dismissed in its entirety.

B. Non-pecuniary damage

62. The applicant also claimed EUR 10,000 as non-pecuniary damage for the violation of her rights under Article 6 of the Convention.

63. The Government submitted that this claim was excessive.

64. The Court accepts that the applicant has suffered non-pecuniary damage resulting from the nature of the unfairness. Ruling on an equitable basis, the Court awards the applicant EUR 8,000 under this head.

C. Costs and expenses

65. The applicant claimed EUR 2,056, representing the costs of ex-husband's estate in the appeal to Family Court of Appeal, which that court had ordered her to pay. The applicant claimed a further EUR 10,000

plus VAT for her own costs and expenses before the Court of Appeal. She claimed a further EUR 10,000 plus VAT for the costs incurred in proceedings before this Court and EUR 403 in expenses covering the preparation of a valuation report on the property in her ex-husband's estate.

66. The Government contested the applicant's claim for costs and expenses incurred before both the Family Court of Appeal and before the present Court. According to the Government, the relevant amounts claimed were excessive and not necessarily incurred to prevent or redress the alleged breach of the Convention.

67. For costs and expenses incurred by the applicant before the Court of Appeal, including the award of EUR 2,056 costs against her, the Court considers that these were necessarily and reasonably incurred in the applicant's attempt to seek redress for the violation of the Convention it has found. Thus, they are in principle recoverable (see, for instance, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 58, ECHR 2007 ...). However, aside from the order concerning the EUR 2,056, the applicant has not provided an itemised bill of costs sufficiently substantiating her claims: the sums claimed are without reference to the number of hours worked to the hourly rate charged (see *Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, no. 55794/00, § 40, ECHR 2003-IX). For this reason, the Court awards the applicant EUR 2,056 under this head and dismisses the remainder of her claim for costs. As regards the EUR 403 expenses incurred by the preparation of a valuation report, given that the Court has dismissed the applicant's claim for pecuniary damage, it follows the Court finds that this expense was not necessarily incurred and must be dismissed.

D. Default interest

68. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 6 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,056 (two thousand and fifty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Guido Raimondi
President